

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FRANCESCO GALLO,

Plaintiff,

-against-

ALITALIA – LINEE AEREE ITALIANE –  
SOCIETA PER AZIONI, PIERANDREA GALLI,  
and GIULIO LIBUTTI,

Defendants.

Case No. 07 CV 06418 (CM)(HP)

**REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL  
PROCEDURE 12 (B) (6)**

Defendants Alitalia Linee Aeree Italiane, S.p.A. (“Alitalia”), Pierandrea Galli (“Galli”) and Giulio Libutti (“Libutti”) (collectively, “Defendants”), by their attorneys, Vedder, Price, Kaufman & Kammholz, P.C., submit this Reply Memorandum of Law with respect to their Motion, pursuant to Fed. R. Civ. Pr. 12 (b) (6), to dismiss plaintiff Francesco Gallo’s (“Plaintiff”) original complaint.

**ARGUMENT**

Plaintiff electronically filed his memorandum of law in opposition to Defendants’ Motion to Dismiss on or about September 4, 2007. Attached to his opposition papers as an exhibit was an amended complaint. Plaintiff (separately) filed his amended complaint on September 7, 2007. Plaintiff’s amended complaint supercedes his initial Complaint and thereby renders Defendants’ motion to dismiss moot. See Nelson V. Lantz, 2006 U.S. Dist. LEXIS 17499, \*5 (D.Conn. 2006); *International Controls Corp. v. Vesco*, 556 F.2d 665, 668 (2d Cir. 1977). Accordingly, Defendants submit this *pro forma* Reply Memorandum only to inform the Court that they plan to

answer or otherwise respond to the amended complaint in due course.

However, if this Court intends to address the merits of the original complaint pursuant to Defendants' motion to dismiss, Defendants request five business days in which to file a substantive reply.

Dated: New York, New York  
September 11, 2007

VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C.

By: /s/ Alan M. Koral  
Alan M. Koral (AK 1503)  
Charles S. Caranicas (CC 9244)

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